**HIGH COURT OF UTTARANCHAL AT NAINITAL**

Writ Petition No. 573 of 2001 (MS)

Chauhal Singh & others ..... Petitioners

Versus

3rd Additional District Judge,
Haridwar & others ..... Respondents

Dated: 24.8.2004

**Hon. Rajesh Tandon J.**

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 15.3.2001 passed by the 3rd Addl. District Judge, Haridwar in Misc. Case No. 128 of 1995.

Briefly stated the facts giving rise to the present writ petition are that Sri Chauhal Singh (now deceased) and petitioners no.2 and 3 had filed a suit No. 86 of 1977 for partition i9n the Court of Civil Judge, Roorkee. The said suit was decreed by the Civil Judge, Roorkee. The plaintiff have filed a Misc. Case No. 113 of 1985 for preparation of final decree which was decided vide order dated 17.10.1994. The petitioner no.2 applied for the copy of judgment and decree by the copy of judgment alone was supplied to the petitioner and it was stated by the copying department that the decree could not be signed. Again when the petitioner made inquiry, he was informed that his application for copy of decree has been rejected on 23.8.1995. The petitioner also moved recall application which

was also rejected by the Officer Incharge Copying Department. Thereafter the petitioner again filed an application for obtaining copy of the decree on 1.9.1995.

The petitioner filed an appeal against the order dated 11.10.1994 before the District Judge, Haridwar alongwith an application under section 5 of the Limitation Act, supported by an affidavit of the petitioner Kesho Ram. The respondents filed objection and the application was dismissed vide order dated 15.3.2001. Aggrieved by the order of dismissal the present writ petition has been filed.

The cause shown for delay in filing the appeal is that the Presiding Officer of the court below has not signed the decree in time and it was prepared and signed by him on 12.5.1995 and the application filed by the petitioner for copy of the decree was rejected by the Officer Incharge of Copying Department. The application for recall of said rejection order was also dismissed and as such the appellant could not obtain copy of the decree in time to the appeal. All ground for condonation of delay has been mentioned by the appellant in the affidavit annexed with the application under section 5 of the limitation Act.

The Apex Court in the case N. Balakrishnan v. M. Krishnamurthy Supreme Court & Full bench Rent Cases, 1998 page 427 held as under:

*"Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit.*

*During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainly and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.*

*It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. Fi the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.*

The need of society is that there should be justice-oriented approach and the appeal should not be rejected only on the

Ground of technicalities. The apex court has held in (2001) 8 SCC 151, M.S. Grewal vs. Deep Chand Sood as under:

*"Law Courts will lose their efficicacy if they cannot possibly respond to the need of the society- technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."*

In view of the above principle of law, the lower appellate court was not justified while rejecting the application of the petitioner under section 5 for condonation of delay in filing the appeal. The writ petition is, therefore, allowed. The lower appellate court is directed to entertain the appeal after condoning the delay in filing the appeal.

No order as to costs.

**(Rajesh Tandon J.)**

24.8.2004

*Dhyani